

(2009) 11 JH CK 0074
In the Jharkhand High Court

Tarapada Roy

APPELLANT

Vs

The State of Jharkhand and Ajay Kumar Agarwalla

RESPONDENT

Date of Decision : 09-11-2009

Acts Referred:

COMPANIES ACT, 1956 — Section 630

Criminal Procedure Code, 1973 (CrPC) — Section 468, 473

Citation : (2010) 124 FLR 655

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Judgement

D.K. Sinha, J.—This Criminal Revision is directed against the order impugned dated 29th April, 2009 passed by the Additional Sessions Judge, FTC ?III Dhanbad in Cr. Appeal No. 243 of 2007 by which Judgment and order recorded by Sri. M.C. Narayan, Judicial Magistrate, 1st Class on 19.9.2007 in C.P. Case No. 1755 of 2005 corresponding to T.R. No. 620 of 2007 convicting the appellant u/s 630 of the Companies Act, 1956 was affirmed and upheld. By such order the petitioner Tarapada Roy having been found wrongfully withholding company's quarter was convicted and called upon to pay fine of Rs. 1000/- with default stipulation and also to vacate the quarter of M/s Jharia Firebricks & Pottery Works Pvt. Ltd i.e. the O.P. No. 2 herein within 30 days

2. The learned Counsel for the petitioner submitted that the petitioner was admittedly an employee of the said Company and was allotted the quarter in question against monthly rent to which an agreement was entered into between the employer and employee petitioner therefore, seeking eviction from the quarter in question occupied by the petitioner under the Companies Act, other than by the process laid down under the Jharkhand Building (Lease, Rent and Eviction) Control Act was unsustainable. The petitioner ceased to be employee since the year 1985 and the case under the Companies Act was filed in the year 2005 i.e after 20 years, therefore, his criminal prosecution was barred by law of limitation u/s 468(2)(C) of the Code of Criminal Procedure . The petitioner immediately deposited the fine amount soon after his appeal was dismissed.

3. The impugned judgment of the learned Judicial Magistrate indicates that Opposite party No. 2 Ajay Kumar Agarwalla was examined as P.W.I, who was the director of M/S Jharia Fire Bricks and Pottery Works(P) Ltd., a company under the Companies Act 1956. He testified that company had its Factory, office and the residential quarters for the employees at Dhansar and quarter No. B-16 was allotted to the petitioner-employee Tarapada Roy during his employment. But he did not vacate the said quarter after he ceased to be employee in the said company for which he was requested several times orally and finally a legal notice was served upon him in the year 200. The opposite party No. 2 further testified that no dues of the petitioner Tarapada Roy was pending with M/s Jharia Fire Bricks and Pottery works(P) Ltd herein after referred to as a Company.

4. The learned Counsel for the O.P. No. 2 explained that since the petitioner ceased to be an employee of the company after September, 1985, he ought to have vacated the quarter in question but since then oral request was being made to him by the authority of the Company but of no avail and ultimately a complaint was filed u/s 630 of the Companies Act 1956 against the petitioner for his eviction from the company's quarter which he was withholding unauthorisedly. The question of limitation u/s 468(2)(C) of the Code of Criminal Procedure did not arise in view of the fact that it was a continuous offence till filing of the complaint.

5 . I find substance in the arguments advanced on behalf of the O.P. No. 2 that the conduct of the petitioner by not vacating the Company's quarter since he ceased to be an employee in the year 1985 of M/s Jharia Firebricks and Pottery Works(P) Ltd indicated his mensrea and O.P. No. 2 was justified to institute a case u/s 630 of the Companies Act 1956. The learned Judicial Magistrate after trial recorded the order of conviction and found that the petitioner was withholding the quarter of the Company unauthorizedly and the petitioner failed to show his bonafides for such withholding. The law of limitation as enshrined u/s 468(2)(C) of Cr.P.C. in the given facts and circumstances though is attracted for the reason that the complaint was lodged after 20 years since the petitioner ceased to be an employee but at the same time, I find substance that the petitioner committed continuous offence by withholding such quarter after he ceased to be an employee and in that manner the O.P. No. 2 was looser. Yet, the provision of Section 473 of Cr.P.C, which is non-obstante clause, can well cure such limitation of launching prosecution subject to discretion of the court for the ends of justice. I find that the interest of justice in the instant case otherwise also demands invocation of the provision of Section 473 of Cr.P.C. on the ground that the petitioner failed to show his bonafides for retention of the Company's quarter for the last 20 years. The petitioner failed to show any ground so as to call for interference in the judgment recorded by the Additional Sessions Judge, F.T.C. No. III Dhanbad in Cr. Appeal No. 243 of 2007 by which the judgment of conviction and order of punishment inflicted to the petitioner by Sri. M.C. Narayan, Judicial Magistrate, Ist Class Dhanbad C.P. Case No. 1/55 of 2005 corresponding to T.R. No. 620 of 2007 was upheld by dismissing appeal. There

being no merit, this Criminal Revision is dismissed.